IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 352 of 1981

in

SPECIAL CIVIL APPLICATIONNo 561 of 1977

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

OIL AND NATURAL GAS COMMISSION

Versus

D DAS GUPTA

Appearance:

1. LETTERS PATENT APPEAL No. 352 of 1981

MR RAJNI H MEHTA for Appellant No.

MR JITENDRA M PATEL for Appellant No.

DS AFF.NOT FILED (R) for Respondent No. 1-19,27-48

MS SNEHA JOSHI for MS VASUBEN P SHAH for Respondent No. 20-26

CORAM : MR.JUSTICE J.N.BHATT
and

MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 09/05/2002

CAV JUDGEMENT

(Per : MR.JUSTICE AKSHAY H.MEHTA)

1. The appellant has approached this Court under Clause 15 of the Letters Patent for challenging the judgment of the learned Single Judge dated 31st December, 1980 delivered in Special Civil Application No. 561 of 1977, whereby the learned Judge allowed the said petition of the respondents and granted them relief directing the appellant to fix the pay of the respondents in the new pay scale by merging central workshop allowance in the said pay.

2. The short facts can be stated as under :-

2.1. The appellant was having central workshop at Baroda. The respondents were working in different capacities at the said workshop. They were either directly recruited or transferred from other departments on the post in the workshop between the period 1st April, 1975 and 25th September, 1976. The respondents received workshop allowance over and above regular salary paid to them by the appellant. A settlement was arrived at under the provisions of section 2 (p) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') read with Rule 58 of the Industrial Disputes Rules, 1957 (hereinafter referred to as 'the Rules') and Form 'I' under section 4-F and Rule 5(1) of the U.P. Industrial Disputes Act/Rules. To represent the employees following unions had participated in the settlement, namely -

i. ONGC Employees Mazdoor Sabha, Baroda
ii. ONGC Workers Association, Sibsagar
iii. ONGC Employees Mazdoor Sabha, Bombay
iv. ONGC Workers Union, Agartala and
v. ONGC Karmachari Union, Dehru Dun.

The relevant portion for the purpose of this appeal of the settlement verbatim reproduced reads as follows :-

"6.1. Consequent upon revision of scales of pay, this allowance shall be abolished. However, for the existing incumbents who are getting this allowance in the Central Workshop, Baroda, the quantum of allowance being drawn shall be merged in the pay in the new scales. Where the entire amount of this allowance cannot be merged,

because of the limit imposed by the maximum of the new pay scale, the balance will be treated as personal pay to be merged in future increases of pay on promotion/appointment to higher post."

This settlement is dated 25th September, 1976. As per the terms of the settlement it was made applicable to the employees who were in the employment of the appellant prior to 1st April, 1975. The appellant made this provision applicable in case of certain employees who came to be posted in the workshop at Baroda from other departments of the appellant after 1st April, 1975 and before 25th September, 1976 also. In light of that, initially 125 persons had filed petition which included direct recruits as well as transferees from post outside the workshop to the workshop between 1st April, 1975 and 25th September, 1976. However, 75 out of the aforesaid number, who were transferred to workshop from other department, were granted the benefit of the settlement and, therefore, they withdrew from the petition. The rest of 48 persons continued.

2.2. The learned Single Judge came to the conclusion that there was hostile discrimination practised by the appellant so far the respondents are concerned and thereby the appellant had violated the principles of equality enshrined in Articles 14 and 16 of the Constitution of India. The learned Single Judge also came to the conclusion that consent of the unions - (1) cannot render the constitutional provisions nugatory, (2) cannot wipe out equality guarantee enshrined in the Constitution of India, (3) cannot over ride the mandate of the Constitution to accord equal treatment. In the opinion of the learned Single Judge, if the situation created in the petition was allowed to continue, it would amount to amending the constitution by the consent of the union. The learned Single Judge, therefore, allowed the petition and granted relief contained in para. 17 (a) of the petition. The appellant being aggrieved by the said judgment has filed this appeal.

3. At the hearing of the appeal Mr. R.H. Mehta, the learned counsel for the appellant submitted before us that the judgment of the learned Single Judge is erroneous in as much as the appellant has not practised hostile discrimination qua the respondents. According to him, the respondents were the employees who had joined the service of the appellant after the cut off date, namely, 1st April, 1975 and, therefore, the provisions of clause 6.1 of the settlement cannot apply to them and they have no just, proper and reasonable grievance to

make on that ground of discrimination. Mr. Mehta has further submitted that settlement arrived at between the employer and the employees under the provisions of section 2 (p) of the Act and the Rules is binding on all the workers/employees unless and until it is established that the settlement is malafide or is arrived at with some ulterior motive. Since in the present case no challenge has been made to the settlement, its one of the provisions contained in clause 6.1 cannot be termed as arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. He has further submitted that so far the persons who stood transferred to workshop from other departments of the appellant between the period 1st April, 1975 and 25th September, 1976 are concerned, they were such employees who were already in the employment of the appellant on or before 1st April, 1975 and they were merely recruited to the workshop from the other departments of the appellant. Therefore, there was justifying reason for the appellant to extend the benefit of settlement to them also. He submitted that since the case of the respondents is totally on different footing, there cannot be any comparison between the two unequals and action of the appellant cannot be branded as arbitrary and/or discriminatory.

3.1. Miss Sneha Joshi learned advocate appearing for Miss V.P. Shah, the learned counsel for the respondents, submitted that the appellant had extended benefit of the settlement of merging the workshop allowance with basic pay to about 75 persons who were recruited in workshop from other departments of the appellant during the aforesaid period, it ought to have extended this benefit to the respondents also. According to her, denial of similar or same treatment to the respondents amounts to practising hostile discrimination by the appellant. She has further submitted that the learned Single Judge has rightly concluded that this provision of the settlement is violative of Articles 14 and 16 of the Constitution of India and hence the respondents deserve to have the same benefit as has been given to other employees by virtue of this settlement. Lastly, she has submitted that the appeal does not have any merit and it deserves to be dismissed.

4. The memorandum of settlement is placed on record of the proceedings by the appellant. It clearly shows that it has been arrived at under the provisions of section 2 (p) of the Act read with rule 58 of the Rules and in Form 1 under section 4-F and rule 5(1) of U.P. Industrial Disputes Act/Rules. The employees of the

appellant have been represented by 5 different unions named above. All these unions are recognized unions/associations and it has been arrived at keeping in view the demand received from various unions on different dates as indicated in clause 2 of the settlement. Clause 6 pertains to 'Central Workshop Allowance' and three provisions contained in clauses 6.1, 6.2 and 6.3 are incorporated in the settlement under this heading. It is after the settlement has been arrived at all the necessary legal formalities have been complied with as can be seen from the record. In light of these facts, the respondents cannot agitate and dispute that the provision with regard to merger of workshop allowance with their basic pay ought to have been made applicable to them. In the settlement the cut off date has been fixed as 1st April, 1975 and the employees who were already there in the employment of appellant before 1st April, 1975 were the only persons eligible to receive benefit thereof. Though the settlement was arrived at on 25th September, 1976, the demarcating line was drawn as on 1st April, 1975. The persons who came to be recruited in the employment of the appellant in the workshop at Baroda after 1st April, 1975 and before 25th September, 1976 cannot be said to be entitled to receive benefit of the settlement. When the cut off date is fixed, only those employees who are covered by virtue of the cut off date may derive the benefit. Those who come at a later point of time i.e. subsequent to the cut off date, cannot make any grievance regarding the settlement on the ground that it does not extend the benefit contained therein to recruits who joined the service of the appellant after the cut off date. Since the settlement has been arrived between the management and the representatives of the workers namely, the unions, it is equally binding to the employees who joined the employment even at a later stage i.e. subsequent to the cut off date fixed in the settlement.

4.1. It has been laid down by catena of decisions, of the Apex Court and the different High Courts, that the settlement once arrived at between the management and the recognized representatives of the workers, namely unions and/or associations, such settlement becomes binding on all the employees of the concerned industry and no individual or group of individuals can challenge it on any ground unless and until the same is shown to be malafide, unjust or unfair as can be seen on the face of it. The settlement comes into existence as a result of a collective bargaining between the management and the employees through their unions or associations and during the course of negotiations all pros and cons of different

issues on the part of the subject matter of the settlement are minutely scrutinised and when the employees are adequately represented, their interest is also adequately protected. In such situation if the provisions of the settlement are not liked by some persons or group of persons or they think that they are hurt by them, they have no right to challenge the same. In this case also when the settlement is found to be absolutely legal, the respondents have no right or authority to challenge the same, as the same equally binds them. The respondents cannot also agitate that since the appellant had recruited employees from different departments to the workshop between 1st April, 1975 and 25th September, 1976 and had given them the benefit of clause 6 of the settlement, the respondents also should receive the same. The striking distinguishing feature is that the appellant has extended this benefit to those category of the employees only because they were already in establishment of the appellant prior to 1st April, 1975 and they were merely brought to the workshop from other departments after 1st April, 1975. They can, therefore, be treated at par with the employees who were already working in the workshop prior to 1st April, 1975. The respondents, however, cannot be equated with them. They formed totally a different category to which the benefit of merger of allowance with basic pay cannot be extended or cannot be granted. However, even when it is so done, the appellant does not practice any discrimination or expose any arbitrariness. Discrimination can be attracted only when there is comparison between two euqals, but is not the case here. In that view of the matter, Mr. Mehta's contention deserves to be accepted.

5. So far the challenge to settlement is concerned Mr. Mehta is right when he pointed out from the record that the respondents have nowhere challenged the settlement and they merely sought the extension of benefit of clause 6 of the settlement on the ground that the respondents have been discriminated by the appellant and they have been wrongly deprived of the said benefit. First of all, as already stated above, it has been well settled principle of law by now that the settlement arrived in course of conciliation proceedings carries a presumption that it is just and fair and in view thereof, merely because persons joining employment in the workshop of the appellant after the cut off date are not extended the benefit of the settlement it cannot be termed as unfair and unjust and discriminatory. Moreover, when such settlement has been legally arrived at, the validity of it cannot be challenged on the ground that it is

violative of Articles 14 and 16 of the Constitution of India. In the case of I.T.C. Ltd. Workers Welfare Association v/s. Management of ITC Ltd. reported in AIR 2002 S.C. 937 the Apex Court has clearly laid down that "the settlement arrived at in the instant case was in the course of conciliation proceedings and therefore it carries a presumption that it is just and fair. It becomes binding on all the parties to the dispute as well as the other workmen in the establishment to which the dispute relates and all other persons who may be subsequently employed in that establishment. An individual employer cannot seek to wriggle out of the settlement merely because it does not suit him."

It further lays down that - "a settlement which is a product of collective bargaining is entitled to due weight and consideration, more so when a settlement is arrived at in the course of conciliation proceeding. The settlement can only be ignored in exceptional circumstances viz. if it is demonstrably unjust, unfair or the result of mala fides such as corrupt motives on the part of those who were instrumental in effecting the settlement. That apart, the settlement has to be judged as a whole, taking an overall view. The various terms and clauses of settlement cannot be examined in piecemeal and in vacuum. In the instant case it cannot be said that the settlement which is otherwise valid and just suffers from any legal infirmity merely for the reason that one of the clauses in the settlement extends the benefits of life pension scheme only to the employees retiring after a particular date i.e. 24/8/1986. Exclusion of workmen retiring before that date is no ground to characterize the settlement as unjust or unfair. Moreover the allegations of mala fides such as corrupt motives have not been levelled against anyone and that aspect becomes irrelevant.

Further there was no challenge at any time to any of the terms of the settlement other than the clause relating to pension in so far as it confines the benefit of lifelong pension only to those who retire on or after 24/8/1986. Secondly, the settlement was reached as a result of collective bargaining and with the assistance of conciliation officer. Invariably, there would be an element of give and take in the deal leading to the settlement. Granting the benefit of lifelong pension prospectively or with limited retroactive effect does not make the settlement unjust or unfair. It is certainly beneficial to the workmen in service and those who retired few months earlier. The mere fact that the Management did not go the whole hog to extend the benefit to all the retired employees does not impart an element of unjustness or unreasonableness to the settlement.

Financial implications apart, the benefits granted to workmen under various other clauses of settlement have to be kept in view. This particular clause relating to pension cannot be considered in isolation. Conferment of such additional benefit to workmen who retired after the date of platinum jubilee celebration and before the date of culmination of settlement, far from marking it unjust or irrational, tantamounts to extending benefit to some more workmen who would not have got it otherwise, if the decision was implemented prospectively. Apparently, such decision was taken to arrive at an amicable settlement and to comply with the demands of the workmen to the context feasible and practicable. The plea that either all the retired employees should be given the benefit or none at all cannot cut ice if the principles of collective bargaining and justness of the settlement viewed as a whole is kept in view. There is nothing which is palpably unjust or irrational in giving the benefit only to those who retired during and after the platinum jubilee year. Though there was some dispute as to the correctness of the date on which the platinum jubilee falls, no material has been placed before us excepting the date of incorporation of the Company to establish the version of the appellants in this regard. Picking up that date by going a little backwards from the date of settlement cannot be regarded as a whimsical or arbitrary step, more so when it was done with the consent of large majority of workmen."

In the same judgment the Apex Court has applied brakes to the challenge to the validity of the settlement vis-a-vis Article 14 of the Constitution of India. It has laid down that -

"In the instant case the settlement was arrived in conciliation proceedings. Under it life pension benefit was extended to employees retiring after particular date. The fixation of cut-off date was challenged before the High Court. The High Court found that the fixation of cut-off date for the purpose of entitlement of life pension could not be said to be arbitrary or irrational as such fixation becomes imperative from financial point of view and moreover the date coincided with the Platinum Jubilee Celebrations of the Company. The date was not picked up from the hat, the High Court observed. The High Court approached the issue more from the angle of Art. 14 and referred to the decisions in which the State's action in making the classification for the purpose of extending the pensionary benefits or additional benefits fell for consideration of this Court. Such approach would not be apt and appropriate. In the instant case Art. 14 cannot

be applied as the employer Corporation was not 'State' or 'other Authority'. The approach should have been whether the settlement can be said to be unjust, unfair or vitiated by mala fides. No mala fides imputed to anyone. What remained to be considered was whether it was fair and just, viewed from a broader angle and taking a holistic view of the matter. Certain considerations germane to Art. 14 may also germane while deciding the issue whether the settlement was just and fair. But it does not follow that the doctrine of classification and the principles associated with it should be projected wholesale into the process of consideration of justness and fairness of the settlement. There may be some overlapping and there may be some facets which apply in common to determine the crucial issue whether the settlement on the whole was just and fair, but that was not to say that the settlement is liable to be tested on the touchstone of Art. 14 more so when it has no application in the instant case."

This Court in case of GMDC Employees Union v/s. Gujarat Mineral Development Corporation reported in 2000 (2) G.L.H. 523 held that -

"As indicated earlier, it is very clear that majority of the workman working as daily rated labourers through their Sangh entered into various agreement to solve their labour disputes. They entered into agreements, and, therefore, it cannot be said that any dispute survives now.

One has to remember that this is a matter governed by the provisions contained in the Industrial Law and the ID Act. How a settlement is to be considered is an important aspect to be borne in mind. When there is a settlement arrived at between the management and a recognized union having majority of the workmen, and if the settlement is just, fair and binding, whether interference by the Court is called for or not is required to be considered.

The Apex Court further pointed out that it is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and other bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained, the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole."

5.1. In view of this position of law, it is not desirable to accept the challenge of the respondents to the settlement on the grounds based on violation of Articles 14 and 16 of the Constitution of India and in view of the aforesaid judgment of the Apex Court, even the conclusions drawn by the learned Single Judge can be termed as erroneous particularly when the settlement itself is not under challenge.

6. In the result, the present appeal succeeds and the judgment of the learned Single Judge is quashed and set aside. The appeal is, therefore, allowed with no order as to costs.

[J.N. BHATT, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.